IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

MACA.No. 326 of 2007()

OPMV.336/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA .
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APPELLANT/PETITIONER

ASSARATH HUSSAIN.C.I,
S/O IBRAHIM C.S., CHEENIKAPURATH HOUSE,
P.O.KONATHAKUNNU, THRISSUR DISTRICT.

BY ADV. SRI.NAGARAJ NARAYANAN
SRI.SAIJO HASSAN
SRI.SABU SREEDHARAN

RESPONDENTS: RESPONDENTS
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1. **PADMAJA SASI, W/O.SASI,**
   MANALIKKATTIL HOUSE,PULLOOTT(P.O),
   THRISSUR DISTRICT.

2. **SASI, S/O.SUKUMARAN,**
   MANALIKATTIL HOUSE, PULLOOTT(P.O),
   THRISSUR DISTRICT.

3. **THE MANAGER,**
   ORIENTAL INSURANCE COMPANY LIMITED,
   BRANCH,KODUNGALLUR.

4. **THE MANAGER,**
   NATIONAL INSURANCE COMPANY LIMITED,
   IRINJALAKUDA BRANCH.

BY ADV. SRI.JOE KALLIATH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 06/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B.KOSHY & V.GIRI, JJ.

M.A.C.A.NO.326 OF 2007 (A)

Dated 6th August, 2007

JUDGMENT

Koshy, J.

Appellant met with an accident by which he suffered following injuries:

1. Closed fracture neck of Rt. Femur.
2. Compound fracture Rt. Femoral shaft.
3. Compound fracture both bone Rt leg.
4. Lateral prophetical nerve palsy (Rt).

Doctor certified 15% disability. Certificate mentioned the following injuries. :

> Patient was treated with multiple surgical procedures. He was given ventilatory treatment for ARDS.
>
> Patient was ambulated on crutches and calipers non WT bearing and discharged on 29.3.1996.

This patient is at present noticed to have the following problems:

1. Limitation of Rt knee movement by about 10%
2. Limitation of Rt ankle movement by about 20%
3. Numbness of 1st web space Rt foot.

This patient is certified to have the following Physical Impairment:

1. Temporary total Physical Impairment for six months from the time of injury.
2. Temporary partial Physical Impairment of 50% for three months thereafter.
3. Permanent partial Physical Impairment of 15% (fifteen percent) only.

He claimed compensation amounting to Rs.4,00,000/-. He was driving a motor cycle and according to him, when he reached at Kozhikode, suddenly a tempo bearing registration No.KL-8/C 1701 driven by the 2nd respondent came in a rash and negligent manner and hit the motor

cycle, thereby accident occurred. Tempo van was insured by the 3rd respondent Insurance company. Tribunal found that accident occurred due to his contributory negligence. Therefore after calculating a total compensation of Rs.2,74,040/- only 50% of the same was awarded. Finding of contributory negligence and quantum of compensation are assailed in this case.

2. The tribunal considered the question of negligence in detail. Tribunal found as follows:

> "A criminal case was charge sheeted against the driver of the tempo bearing registration No.KL-8/C 1701 for the offences punishable under Section 279, 337 and 338 of IPC. Ext.A3 is the copy of police charge. Ext.A1 is the copy of first information report. It is seen from Exts.A1 and A3 that the accident took place due to the rash and negligent driving on the part of the 2nd respondent. Ext.A2 is the copy of scene mahazar. It is seen from the copy of scene mahazar that the tarred portion of the road where the accident took place had a width of 4.96 metres. The accident took place at a place situated about 3.04 metres west from the eastern tar end portion of the road, that is, the accident took place on the western side of the mid line of the road. The accident took place on the western portion of the road.

> The petitioner was riding the motor cycle from north to south. He should have driven the motor cycle through the eastern side of the road. There was sufficient width for the eastern portion of the road. If the petitioner was riding the motor cycle through the eastern side of the road, no such accident would have happened. He entered into the western side of the road. The tempo was coming from south to north. The 2nd respondent was driving the tempo through the western side of the road. Western side of the road was the proper track of the road to the 2nd respondent. Since he was riding the vehicle from south to north and if the petitioner was riding the vehicle through the eastern side of the road he could have avoided the accident."

We agree with the above reasoning. Tribunal rightly held that the both drivers were negligent. We see no ground to interfere in the findings of the tribunal fixing contributory negligence on the appellant also. On the facts and circumstances of the case, tribunal though marked disability certificate as Ext.A10 granted compensation for 10% disability only. We are of the view that there was no reason for the tribunal to differ from the assessment made by the qualified Medical practitioner. The certificate was issued by

the Chief Orthopaedic Surgeon, who was having Post graduate degree in Orthopaedics. The tribunal calculated compensation as Rs.4000 x 12 x $^{10}/_{100}$ x 18 = Rs.86,400/-, 18 as the multiplier as he was aged 25 at the time of accident. Since 18 was taken on the basis of the guideline procedure under the 2nd Schedule, we see no ground for enhancing the same. He was employed abroad. Only Rs.4,000/- was taken as the monthly salary. It is vehimentally contended that since he was working abroad exchange rate has to be taken for calculating the salary. If that is so, monthly income ought have been three times higher than what was calculated by the tribunal. But in the absence of any data, we see no ground to enhance the monthly income taken by the tribunal. For 15% disability, additional compensation payable will be Rs.43,200/- (Rs.4,000 x 12 x $15/_{100}$ = 1,29,600-86,400) and 50% has to be deducted. Therefore additional compensation will be Rs.21,600/-. The above amount should be deposited by the 3rd respondent Insurance company with 8% interest from the date of application till its deposit over and above the

decreed amount by the tribunal. On deposit of the above amount appellant is allowed to withdraw the amount. With the above observations this appeal is allowed partly.

J.B.KOSHY, JUDGE

V.GIRI, JUDGE

prp